

1 MICHAEL N. FEUER, City Attorney (SBN 111529)  
2 VALERIE L. FLORES, Managing Ass't City Atty (SBN 138572)  
3 BETHELWEL WILSON, Deputy City Atty (SBN 251805)  
4 OFFICE OF THE CITY ATTORNEY  
5 200 North Main Street, Room 800, City Hall East  
6 Los Angeles, CA 90012-4131  
7 Telephone: (213) 978-7100  
8 Email: bethelwel.wilson@lacity.org

9  
10 Attorneys for Respondent  
11 City of Los Angeles

12  
13 **FEE EXEMPT—Gov. Code § 6103**

14  
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF LOS ANGELES**

17  
18 ADRIAN RISKIN, an Individual;

19 Petitioner,

20 vs.

21 CITY OF LOS ANGELES, a Charter City and  
22 Municipal Corporation; and DOES 1 THROUGH  
23 , INCLUSIVE,

24 Respondents.

25 ) **CASE NO. 19STCP05266**  
26 ) [Department 85, Honorable  
27 ) James C. Chalfant.]  
28 )  
29 ) **RESPONDENT'S MEMORANDUM OF**  
30 ) **POINTS AND AUTHORITIES IN**  
31 ) **OPPOSITION TO PETITION FOR WRIT**  
32 ) **OF MANDATE; DECLARATIONS OF B.**  
33 ) **O'CONNOR, C. DENNIS, AND B.**  
34 ) **WILSON; REQUEST FOR JUDICIAL**  
35 ) **NOTICE, IN SUPPORT THEREOF**

36 Date: November 11, 2020  
37 Time: 1:30 pm  
38 Dept.: 85  
39 JUDGE: HON. JAMES C. CHALFANT

40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
5510  
5511  
5512  
5513  
5514  
5515  
5516  
5517  
5518  
5519  
5520  
5521  
5522  
5523  
5524  
5525  
5526  
5527  
5528  
5529  
5530  
5531  
5532  
5533  
5534  
5535  
5536  
5537  
5538  
5539  
5540  
5541  
5542  
5543  
5544  
5545  
5546  
5547  
5548  
5549  
55410  
55411  
55412  
55413  
55414  
55415  
55416  
55417  
55418  
55419  
55420  
55421  
55422  
55423  
55424  
55425  
55426  
55427  
55428  
55429  
55430  
55431  
55432  
55433  
55434  
55435  
55436  
55437  
55438  
55439  
55440  
55441  
55442  
55443  
55444  
55445  
55446  
55447  
55448  
55449  
55450  
55451  
55452  
55453  
55454  
55455  
55456  
55457  
55458  
55459  
55460  
55461  
55462  
55463  
55464  
55465  
55466  
55467  
55468  
55469  
55470  
55471  
55472  
55473  
55474  
55475  
55476  
55477  
55478  
55479  
55480  
55481  
55482  
55483  
55484  
55485  
55486  
55487  
55488  
55489  
55490  
55491  
55492  
55493  
55494  
55495  
55496  
55497  
55498  
55499  
554100  
554101  
554102  
554103  
554104  
554105  
554106  
554107  
554108  
554109  
554110  
554111  
554112  
554113  
554114  
554115  
554116  
554117  
554118  
554119  
554120  
554121  
554122  
554123  
554124  
554125  
554126  
554127  
554128  
554129  
554130  
554131  
554132  
554133  
554134  
554135  
554136  
554137  
554138  
554139  
554140  
554141  
554142  
554143  
554144  
554145  
554146  
554147  
554148  
554149  
554150  
554151  
554152  
554153  
554154  
554155  
554156  
554157  
554158  
554159  
554160  
554161  
554162  
554163  
554164  
554165  
554166  
554167  
554168  
554169  
554170  
554171  
554172  
554173  
554174  
554175  
554176  
554177  
554178  
554179  
554180  
554181  
554182  
554183  
554184  
554185  
554186  
554187  
554188  
554189  
554190  
554191  
554192  
554193  
554194  
554195  
554196  
554197  
554198  
554199  
554200  
554201  
554202  
554203  
554204  
554205  
554206  
554207  
554208  
554209  
554210  
554211  
554212  
554213  
554214  
554215  
554216  
554217  
554218  
554219  
554220  
554221  
554222  
554223  
554224  
554225  
554226  
554227  
554228  
554229  
554230  
554231  
554232  
554233  
554234  
554235  
554236  
554237  
554238  
554239  
554240  
554241  
554242  
554243  
554244  
554245  
554246  
554247  
554248  
554249  
554250  
554251  
554252  
554253  
554254  
554255  
554256  
554257  
554258  
554259  
554260  
554261  
554262  
554263  
554264  
554265  
554266  
554267  
554268  
554269  
554270  
554271  
554272  
554273  
554274  
554275  
554276  
554277  
554278  
554279  
554280  
554281  
554282  
554283  
554284  
554285  
554286  
554287  
554288  
554289  
554290  
554291  
554292  
554293  
554294  
554295  
554296  
554297  
554298  
554299  
554300  
554301  
554302  
554303  
554304  
554305  
554306  
554307  
554308  
554309  
554310  
554311  
554312  
554313  
554314  
554315  
554316  
554317  
554318  
554319  
554320  
554321  
554322  
554323  
554324  
554325  
554326  
554327  
554328  
554329  
554330  
554331  
554332  
554333  
554334  
554335  
554336  
554337  
554338  
554339  
5543310  
5543311  
5543312  
5543313  
5543314  
5543315  
5543316  
5543317  
5543318  
5543319  
55433100  
55433101  
55433102  
55433103  
55433104  
55433105  
55433106  
55433107  
55433108  
55433109  
55433110  
55433111  
55433112  
55433113  
55433114  
55433115  
55433116  
55433117  
55433118  
55433119  
554331100  
554331101  
554331102  
554331103  
554331104  
554331105  
554331106  
554331107  
554331108  
554331109  
554331110  
554331111  
554331112  
554331113  
554331114  
554331115  
554331116  
554331117  
554331118  
554331119  
5543311100  
5543311101  
5543311102  
5543311103  
5543311104  
5543311105  
5543311106  
5543311107  
5543311108  
5543311109  
5543311110  
5543311111  
5543311112  
5543311113  
5543311114  
5543311115  
5543311116  
5543311117  
5543311118  
5543311119  
55433111100  
55433111101  
55433111102  
55433111103  
55433111104  
55433111105  
55433111106  
55433111107  
55433111108  
55433111109  
55433111110  
55433111111  
55433111112  
55433111113  
55433111114  
55433111115  
55433111116  
55433111117  
55433111118  
55433111119  
554331111100  
554331111101  
554331111102  
554331111103  
554331111104  
554331111105  
554331111106  
554331111107  
554331111108  
554331111109  
554331111110  
554331111111  
554331111112  
554331111113  
554331111114  
554331111115  
554331111116  
554331111117  
554331111118  
554331111119  
5543311111100  
5543311111101  
5543311111102  
5543311111103  
5543311111104  
5543311111105  
5543311111106  
5543311111107  
5543311111108  
5543311111109  
5543311111110  
5543311111111  
5543311111112  
5543311111113  
5543311111114  
5543311111115  
5543311111116  
5543311111117  
5543311111118  
5543311111119  
55433111111100  
55433111111101  
55433111111102  
55433111111103  
55433111111104  
55433111111105  
55433111111106  
55433111111107  
55433111111108  
55433111111109  
55433111111110  
55433111111111  
55433111111112  
55433111111113  
55433111111114  
55433111111115  
55433111111116  
55433111111117  
55433111111118  
55433111111119  
554331111111100  
554331111111101  
554331111111102  
554331111111103  
554331111111104  
554331111111105  
554331111111106  
554331111111107  
554331111111108  
554331111111109  
554331111111110  
554331111111111  
554331111111112  
554331111111113  
554331111111114  
554331111111115  
554331111111116  
554331111111117  
554331111111118  
554331111111119  
5543311111111100  
5543311111111101  
5543311111111102  
5543311111111103  
5543311111111104  
5543311111111105  
5543311111111106  
5543311111111107  
5543311111111108  
5543311111111109  
5543311111111110  
5543311111111111  
5543311111111112  
5543311111111113  
5543311111111114  
5543311111111115  
5543311111111116  
5543311111111117  
5543311111111118  
5543311111111119  
55433111111111100  
55433111111111101  
55433111111111102  
55433111111111103  
55433111111111104  
55433111111111105  
55433111111111106  
55433111111111107  
55433111111111108  
55433111111111109  
55433111111111110  
55433111111111111  
55433111111111112  
55433111111111113  
55433111111111114  
55433111111111115  
55433111111111116  
55433111111111117  
55433111111111118  
55433111111111119  
554331111111111100  
554331111111111101  
554331111111111102  
554331111111111103  
554331111111111104  
554331111111111105  
554331111111111106  
554331111111111107  
554331111111111108  
554331111111111109  
554331111111111110  
554331111111111111  
554331111111111112  
554331111111111113  
554331111111111114  
554331111111111115  
554331111111111116  
554331111111111117  
554331111111111118  
554331111111111119  
5543311111111111100  
5543311111111111101  
5543311111111111102  
5543311111111111103  
5543311111111111104  
5543311111111111105  
5543311111111111106  
5543311111111111107  
5543311111111111108  
5543311111111111109  
5543311111111111110  
5543311111111111111  
5543311111111111112  
5543311111111111113  
5543311111111111114  
5543311111111111115  
5543311111111111116  
5543311111111111117  
5543311111111111118  
5543311111111111119  
55433111111111111100  
55433111111111111101  
55433111111111111102  
55433111111111111103  
55433111111111111104  
55433111111111111105  
55433111111111111106  
55433111111111111107  
55433111111111111108  
55433111111111111109  
55433111111111111110  
55433111111111111111  
55433111111111111112  
55433111111111111113  
55433111111111111114  
55433111111111111115  
55433111111111111116  
55433111111111111117  
55433111111111111118  
55433111111111111119  
554331111111111111100  
554331111111111111101  
554331111111111111102  
554331111111111111103  
554331111111111111104  
554331111111111111105  
554331111111111111106  
554331111111111111107  
554331111111111111108  
554331111111111111109  
554331111111111111110  
554331111111111111111  
554331111111111111112  
554331111111111111113  
554331111111111111114  
554331111111111111115  
554331111111111111116  
554331111111111111117  
554331111111111111118  
554331111111111111119  
5543311111111111111100  
5543311111111111111101  
5543311111111111111102  
5543311111111111111103  
5543311111111111111104  
5543311111111111111105  
5543311111111111111106  
5543311111111111111107  
5543311111111111111108  
5543311111111111111109  
5543311111111111111110  
5543311111111111111111  
5543311111111111111112  
5543311111111111111113  
5543311111111111111114  
55433111111111111111

1

**MEMORANDUM OF POINTS AND AUTHORITIES**

2

**I. BACKGROUND**

3 To engage petitioner in the realm of the California Public Records Act (“CPRA”) is to entangle  
4 oneself with an implacable force of nature, a requester for whom no request is too burdensome or  
5 voluminous to satisfy. Apprising Petitioner that his CPRA requests constituted 40 percent of LAPD’s  
6 caseload, Captain Bryan Lium, on August 6, 2020 wrote: “[petitioner] frequently submit(s) CPRA  
7 requests to the Department that are complex, vague, and/or overbroad, which create considerable  
8 burdens for the Department’s staff to fulfill their other work responsibilities and efficiently serve other  
9 members of the public.” (O’Connor Decl. ¶ 4 Ex. A.) Since July 1, 2019 to the present, petitioner has  
10 submitted 275 requests to LAPD, 130 requests to the City Attorney’s Office, 120 requests to LAX, 65  
11 requests to the City’s IT department (“ITA”), and approximately 30 requests to the City Council.  
12 (O’Connor Decl. ¶ 3; Wilson Decl. ¶ 2; Dennis Decl. ¶ 11.) Since February 2019 to the present, Mr.  
13 Riskin has also filed 10 lawsuits against the City over CPRA disputes. (Wilson Decl. ¶ 2.)

14 In the instant action, petitioner seeks an order that would dictate how the City processes its  
15 electronic records under Section 6253.9 of the Government Code. City’s protocol for producing  
16 electronic records has been carefully developed to comply with the CPRA and reflects the industry  
17 standard. Petitioner is not entitled to dictate how City processes its electronic records. Moreover,  
18 requiring City to reproduce thousands of emails would be unduly burdensome. This petition for relief  
19 should be dismissed to the extent it seeks relief not authorized by the CPRA. Alternatively, should relief  
20 be granted, City requests that the court narrowly tailor its order to only requiring the City to remedy  
21 defects on particular pages of the preexisting production identified by petitioner.

22

**II. STATEMENT OF FACTS**

23 On December 13, 2019, petitioner filed the instant mandamus action after receiving  
24 dissatisfactory responses to the “Huizar Request” (submitted in November 2018), the “Forms Request”  
25 (submitted in 2019), “Garcetti Request” (submitted in February 2016); and the “Williams-Westall  
26 Request (submitted in August in 2019). Upon receipt of petitioner’s writ, counsel for City directed  
27 petitioner’s requests to ITA for processing. The Forms Request was processed rather quickly since the  
28

1 ITA search yielded less than 200 responsive documents and required no format conversion. As to the  
2 other three requests, ITA sent to the City Attorney search results via individual mbox links which  
3 counsel for City submitted to Zylab, an outside vendor under City contract that extracts files from mbox  
4 and converts them to pdf for purposes of redacting and tagging. Once the pdfs are redacted and tagged  
5 for responsiveness and/or privilege, the requester receives a single file or multiples files of the final  
6 nonexempt production in a single or in multiple pdf files depending on the size of the production. If a  
7 requester disputes a privilege designation, the custodian can easily locate the disputed record by its  
8 designated tag. The review features in Zylab enable custodians to quickly sort through voluminous  
9 records common to broad CPRA requests and complex litigation. In this instance, because the Williams-  
10 Westall search produced 1,616 potentially responsive emails, the Huizar Request produced 19,600  
11 potentially responsive emails, and the Garcetti Request produced 9,112 potentially responsive emails  
12 (narrowed request), it took counsel for City approximately 5 months to review and redact documents for  
13 privilege and to remove duplicates. City produced pdfs comprised of 1,115 pages emails responsive to  
14 the Westhall request, 3,201 pages of emails responsive to the Garcetti request, and 6,498 pages of emails  
15 responsive to the Huizar request. City ultimately produced a reduced number of emails to petitioner, not  
16 because the city purposefully overestimated the number of records, but because removal of duplicates  
17 and privileged withholdings were required: (Wilson Decl. ¶¶ 3-5.)

18 In back-and-forth conversations with City, petitioner raised the issue of records being produced  
19 in MBOX. Counsel for City explained that City has never produced redacted emails in MBOX although  
20 has, when requested, produced in MBOX emails that do not require review or redaction. To explain the  
21 City's limitations further, counsel for City arranged for opposing counsel to speak with an ITA  
22 supervisor, who explained that City had not yet acquired the capability to review or redact emails in  
23 MBOX; hence, City's reliance on converting MBOX files to PDF for review and redaction. (Wilson  
24 Decl. ¶ 6; Dennis Decl. ¶ 8.) At no point during the meet-and-confer process or nowhere in this petition  
25 has petitioner informed City of specific pages in the City's productions that were illegible or otherwise  
26 deficient. City did inform petitioner, through counsel, that if he desired metadata, City is able to generate  
27 metadata files in a separate load file that can be reviewed and redacted. (Wilson Decl. ¶ 7.) The City's  
28 offer was never accepted, as petitioner insisted on all data being produced in MBOX. To the extent

petitioner has identified deficiencies in his declaration specific pages where of City's production where attachments in native format are missing or pages are illegible, City is willing to work with Petitioner to cure these defects as well as provide non-exempt metadata in pdf format, as previously offered by City.

On October 23, 2020, counsel for City learned that the Zylab software used to process the three email requests at issue possesses the capability to reproduce the production as follows: non-redacted emails in a range of native formats, attachments in native format, metadata, and redacted, text-searchable emails in PDF format. While this method of production is possible in the instant case, it may not be possible in others, as no City employees outside a few City Attorneys have access to Zylab software (due to licensing costs), and each request for MBOX or native format must be evaluated on a case-by-case, factoring in the nature of the request, technological feasibility, and burdens placed on the department producing the records. (Wilson Decl. ¶ 8; Ex. A.)

### III. ARGUMENT

A. City's PDF production is lawful under 6253.9, because it is the format used by City to create copies for its own use and provision to other agencies.

This dispute between Petitioner and Respondent regarding the format in which an agency is obligated to produce a record is somewhat understandable given the lack of state-level judicial guidance regarding the issue presented to the court. Contrary to petitioner’s view, 6253.9 does not give petitioner the power to override the City’s well-established production methods with his own production preferences – an interpretation supported by a plain reading of the 6253.9.

Section 6253.9 obligates agencies to provide records, when requested in electronic format, “in any electronic format in which it holds the information.” 6253.9(a).] Further, “each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies” [6253.9(b).]

California courts have long recognized that the language used in a statute or constitutional provision should be given its ordinary meaning, and “[i]f the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters).” (*Lungren v.*

1 *Deukmejian* (1988) 45 Cal.3d 727, 735. To that end, courts generally must “accord[] significance, if  
2 possible, to every word, phrase and sentence in pursuance of the legislative purpose,” and have warned  
3 that “[a] construction making some words surplusage is to be avoided.” (*Dyna-Med, Inc. v. Fair*  
4 *Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387. In cases of uncertain meaning, courts may  
5 also consider the consequences of a particular interpretation, including its impact on public policy.”  
6 (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1190.)

7 Section 6253.9 was amended to reflect its current form in September 30, 2000 following the  
8 passage of AB 2799, which, among other reforms, proposed eliminating the discretion of public  
9 agencies to provide computer records in any format determined by the agency. Further, AB 2799  
10 required an agency to provide computer records in any format that it currently uses. (RJN; Wilson Decl.  
11 ¶ 1, Ex. A.) With significant advances in technology that occurred in 2000, there was a growing public  
12 appetite for agencies to produce records in an electronic format. The concern by the bill sponsor  
13 (California Newspaper Publisher’s Association) was that agencies, instead of providing requesters with  
14 the cd or disk the electronic records were stored on, agencies were choosing to print the records for  
15 which the public paid. The printing costs, especially in cases of voluminous records, practically made  
16 the records inaccessible to the public. AB 2799 was crafted to avoid this unfair outcome. (RJN; Wilson  
17 Decl. ¶ 1, Ex. B.)

18 The language of section 6253.9 obligates City to provide petitioner with emails in any electronic  
19 format in which City holds them. PDF is an electronic format in which City holds the Google mails;  
20 therefore, City’s provision of emails in PDF format complies with 6253.9, the legislative history of  
21 which was concerned with agencies choosing in bad faith a format that effectively deny requesters  
22 access to nonexempt public information. In distinction, City’s PDF productions have not denied  
23 petitioner access to any non-exempt public information. Likewise, a low-quality production, as alleged  
24 by petition does not amount to denial of access. Entitlement to a high-quality or organized production is  
25 not a cognizable right under the CPRA.<sup>1</sup> A closer examination of petitioner’s complaints about City’s  
26 production quality immediately illuminates their hollowness, as City-generated pdfs are generously

---

27  
28 <sup>1</sup> In FOIA cases, the federal courts have held agencies do not have a duty to arrange responsive records in a particular order.  
(See, *Dent v. Exec. Office for U.S. Attorneys* (2013) 926 F. Supp. 2d 257, 256; *Shapiro v. U.S. Dep’t of Justice* (2014) 37 F.  
Supp. 3d 7, 20.)

1 analyzed, published, and archived by petitioner on the two social media websites he administers:  
2 <http://michaelkohlhaas.org/wp/about-us/> and <https://twitter.com/dotkohlhaas?lang=en>.<sup>2</sup>

3 Despite Petitioner's attempt to denigrate City's production methods, producing electronically  
4 stored information in PDF format has been standard practice in the realm of federal litigation for at least  
5 a decade.<sup>3</sup> Finally, adopting petitioner's interpretation of section 6253.9 would produce a poor policy  
6 outcome because it could lead to lengthier production times by agencies - and possibly more mandamus  
7 lawsuits- as requesters seek challenging formats in which agencies difficult format are unable to  
8 produce due to technical limitations.

9 In sum, City's PDF format is lawful under section 6253.9 because it is the format in which the  
10 City holds the requested records and is a format that complies with federal guidelines and practices. If  
11 the court were to find that the City's production violates section 6253.9, City requests that the court's  
12 order be narrowly tailored to the production capabilities of the Zylab software used to process this  
13 production.

14 **B. Requiring the City to Reproduce the Entire Production is Unduly Burdensome and  
15 Duplicative**

16 In providing Petitioner with records in an electronic format – pdf – in which it holds and  
17 distributes records internally and to other agencies, the City has satisfied its obligations under California  
18 Government section 6253.9. Acquiescence to Petitioner's insistent demands for MBOX format would  
19 significantly impair City's operations, as converting City's everyday production process to reflect  
20 Petitioner's preferences would require an infusion of additional money, resources, and staff City does  
21 not have at its disposal. (Dennis Decl. ¶ 9.)

22 The CPRA provides a justification for withholding records where on the facts of a particular case  
23 the public interest served by not disclosing the record clearly outweighs the public interest served. (Cal.  
24 Gov. C. § 6255; *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 452.)

---

25  
26 <sup>2</sup> In a tweet Petitioner posted on October 5, 2020, he extolled the attributes of an 800-page pdf document he had received  
27 from City (See, <https://twitter.com/DotKohlhaas/1313213488932614145/photo/1>). Petitioner also maintains an extensive  
archive of City-produced emails at <http://michaelkohlhaas.org/wp/about-us/>.

28 <sup>3</sup> See The Sedona Conference Glossary: E-Discovery & Digital Information Management (Fourth Edition), 15 SEDONA  
CONF. J. 305, 323, 337, 341, 347, 359 (2014) (containing definitions of "Electronic Image," "Load File," "Native  
Format," "TIFF," and "Portable Document File (PDF)").

1 The nature of the records, how directly the records contribute to the public's understanding of  
2 government, and whether there are alternative, less intrusive means of obtaining the information sought  
3 are factors that must be considered in assigning weight to the public interest in favor of disclosure.  
4 [*Humane Society of the United States v. Sup. Ct.* (2013) 214 Cal. App.4th1233, 1268.); *Connell v. Sup.*  
5 *Ct.* (1997) 46 Cal. App. 4th 601, 616; *San Jose v. Sup. Ct.* (1999) 74 Cal. App.4th 1008, 1020.]

6 Because the public has an interest in the cost and efficiency of government, a public agency's  
7 expense and inconvenience associated with making a record available to the requester must be factored  
8 into this balancing. (See *Deukmejian, supra*, 32 Cal.3d at 453.) "To refuse to place [expense and  
9 inconvenience] on the section 6255 scales would make it possible for any person requesting information  
10 for any reason or for no particular reason, to impose upon a governmental agency a limitless obligation.  
11 Such a result would not be in the public interest." (*Ibid.*) In *Deukmejian*, disclosure would have required  
12 the public agency to segregate exempt information from non-exempt information on 100 individual  
13 records where there was no clear delineation of confidential material. (*Id.*, at 453.) The Supreme Court  
14 found that the public agency's burden in producing the records clearly outweighed whatever benefit the  
15 disclosure of the non-exempt information would have provided. (*Ibid.*)

16 Here, the balancing test weighs in favor of denying a reproduction of thousands of emails in the  
17 manner suggested by petitioner and petitioner's expert. Receiving essentially duplicate emails would not  
18 add to the public's understanding of government any more than the City-produced PDF files already in  
19 petitioner's possession. It took counsel for City five months to review the instant production. ITA  
20 predicts the amount of time to review petitioner's requests would triple if City were to follow  
21 petitioner's production directive. Multiply this effect across the more 600 hundred CPRA requests  
22 petitioner has filed since July 1, 2019, and the result is City departments deprived of any capacity to  
23 conduct their essential duties, among which include processing requests received from other public  
24 members. With no tools in City's Google Vault to redact emails in MBOX format and insufficient  
25 personnel to carry out petition my-way-or-the-highway production preference, City is placed in the  
26 impossible position of providing petitioner with no documents at all or documents in PDF format, which  
27 is what it did here. Lastly, in asking the City reproduce thousands of emails he has generically alleged as  
28 deficient, petitioner is failing to avail himself of less intrusive means of obtaining the nonexempt

1 information. Said means would involve petitioner communicating to City, as he has informed City  
2 belatedly in his declaration, the specific portions areas in the production that are defective so that City  
3 could fix errors where necessary, saving time, money, and resources. If petitioner were to accept City's  
4 offer to provide the production in accordance with the capabilities of the Zylab software, as expressed  
5 above, the burden on the City would be considerably lessened.

6

7 **IV. CONCLUSION**

8 Based on the foregoing, City requests that the court denies mandamus relief on the basis that  
9 City has met its obligations to provide petitioner with electronic records in the format held by the City.  
10 To the extent the court orders City to reproduce the instant production, City requests that it only be  
11 required to reproduce the production in line with the technical capabilities of the Zylab software  
12 described herein.

13

14 Dated: October 24 , 2020

15 MICHAEL N. FEUER, City Attorney  
16 VALERIE L. FLORES, Managing Assistant City Atty  
17 BETHELWEL WILSON, Deputy City Attorney

18

19

20

21

22

23

24

25

26

27

28

By: Bethelwel Wilson  
BETHELWEL WILSON

**PROOF OF SERVICE -- (VIA VARIOUS METHODS)  
CASE NO. 19STCP05266**

I, the undersigned, say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 200 North Main Street, Suite 800, Los Angeles, California 90012.

On, October 24, 2020 I served the foregoing documents described as: **RESPONDENT'S  
MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITION FOR  
WRIT OF MANDATE; DECLARATIONS OF B. O'CONNOR, C. DENNIS, AND B. WILSON;  
REQUEST FOR JUDICIAL NOTICE, IN SUPPORT THEROF** on all interested parties in this  
action by placing copies thereof enclosed in a sealed envelope addressed as follows:

- [ ] BY MAIL - I deposited such envelope in the mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in affidavit; and/ or
- [ ] BY PERSONAL SERVICE – () I delivered by hand, or () I caused to be delivered via messenger service, such envelope to the offices of the addressee with delivery time prior to 5:00 p.m. on the date specified above.
- [ ] BY OVERNIGHT COURIER - I deposited such envelope in a regularly maintained overnight courier parcel receptacle prior to the time listed thereon for pick-up. Hand delivery was guaranteed by the next business day.
- [X] BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct. Executed on October 24, 2020, at Los Angeles, California.

- Betheluel Wilson